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**AUG 27 2008**

**OFFICE OF PETITIONS**

In re Application of :  
England et al. :  
Application Number: 10/660123 :  
Filing Date: 09/10/2003 : **ON PETITION**  
Attorney Docket Number: GC774-2 :

This is a decision on the petition under 37 CFR 1.137(b)<sup>1</sup> filed on July 7, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on March 28, 2008, for failure to timely reply to the non-final Office action mailed on December 27, 2007, which set a two (2) month shortened period for reply. Notice of Abandonment was mailed on July 10, 2008.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Receipt of the amendment filed as the required reply is acknowledged.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.<sup>2</sup> The three (3)-month extension request filed on July 7, 2008, was submitted more than three (3) months after the end of the period for reply to the non-final Office action mailed on December 27, 2007, and therefore is unnecessary. The extension of time fee paid on July 7, 2008, will be credited to counsel's deposit account as authorized.

The application is referred to Technology Center Art Unit 1645 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup> See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).